

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 5:14-cv-00217-BO

VARIETY STORES, INC.,

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

**SUPPLEMENTAL DECLARATION OF
KAREN DINEEN IN SUPPORT OF WAL-
MART STORES, INC.'S MOTION FOR
SUMMARY JUDGMENT**

DECLARATION OF KAREN DINEEN

I, Karen Dineen, declare as follows:

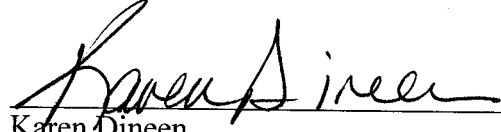
1. I am the Senior Director, Brand Management, at Wal-Mart Stores, Inc. ("Walmart"), the defendant in the above-entitled action. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. As I previously testified during deposition, in 2011 when Walmart started using its mark BACKYARD GRILL + Design, Walmart was aware of Variety's federal registration for the mark THE BACKYARD, registered in class 42 for "retail store services in the field of law and garden equipment and supplies." Walmart has not used its mark BACKYARD GRILL + Design for "retail store services."

3. In 2011 when Walmart started using its mark BACKYARD GRILL + Design, Walmart was not aware of any of Variety's claimed unregistered or "common law" uses of marks incorporating the word "backyard" in connection with any products, including lawn and garden products. I know this because I was employed by Walmart at the time and was involved in the decision to use BACKYARD GRILL + Design on grills and grilling accessories.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed May 26 2015, at Bentonville, Arkansas.



Karen Dineen